In the High Court of Judicature at Madras

Dated: 10/04/2003

C O R A M

The Honourable Mr. Justice P. SHANMUGAM
and
The Honourable Mr. Justice S.K. KRISHNAN

Habeas Corpus Petition No.971 of 2001

Yogeswari .. Petitioner

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Public (SC) Department,
Fort St. George,
Chennai-9.

2. The District Collector,
Chengleput District,
Kancheepuram. .. Respondents

PRAYER : Petition under Article 226 of the Constitution of India seeking to issue a Writ of Habeas Corpus calling for the records in relation to the detention order passed under the provisions of Foreigners Act, 1946 made in G.O. No.SR.III/3136-4/2000 dated 11.12.2000 on the file of the first respondent herein, quash the same and consequently direct the respondents to produce the body of the detenu Anandh @ Anandh @ Geetha Annan, S/o. Chitrambalam, now detained in the Special Camp for Srilankan Refugees at Chingleput before this Hon'ble Court and set him at liberty forthwith.

!For Petitioner : Mr. B. Kumar, Senior Counsel
for Mr. R. Loganathan.

^For Respondents : Mr. A. Navaneethakrishnan,
Addl. Public Prosecutor.

:O R D E R

DELIVERED BY P. SHANMUGAM, J.

The above Habeas Corpus Petition is filed seeking to quash the order passed by the first respondent dated 11.12.2000 under Section 3(2)(e) of the Foreigners Act, 1946 and for a direction to the respondents to set at liberty the petitioner's son Thiru. Anandh @ Anandh @ Geetha Annan, who is hereinafter referred to as the detenu.

2. The petitioner is a Sri Lankan citizen. She came to India along with her son, the detenu herein, as a refugee due to the ethnic violence in Sri Lanka during 1983. According to her, she came by lawful means using their Passports. On arrival in India, they registered themselves as refugees and complied with several other formalities required of a refugee from Sri Lanka. The detenu is married and having a three years old daughter. According to the petitioner, on 16.10.2000 , four plain clothed men from 'Q' Branch C.B.C.I.D. came to the residence of the petitioner at about 2 pm and took the detenu. Since the petitioner was not aware of the whereabouts of the detenu and persons who took him, initially she had filed a criminal complaint before the J-1 Saidapet Police Station. The case was registered as Crime No.2 954 of 2000. Subsequently, the petitioner came to know that a case was registered against the detenu in Crime No.1 of 2000 under Sections 120B, 489A, 489B, 489C and Section 12(1)(c) of the Passport Act read with Section 14 of the Foreigners Act, 1946 and that he was remanded to judicial custody on 25.10.2000. According to her, the detenu was innocent and therefore, she had applied for bail and after the initial rejection of the bail application, upon completion of 90 days and after the filing of the final report by the police, the learned Principal Sessions Judge, Tiruchirapalli ordered release of the detenu on bail in Crl. M.P. No.211 of 2001 on 1.2.2001. As it took some time to comply with the conditions and furnishing of the sureties, when the detenu was about to be released on bail, on 19.2.2001, the C.B.C. I.D. served upon the detenu, the impugned order dated 11.12.2000 and he has been ever since detained in the Special Camp for Sri Lankan Refugees at Chengalpattu. The above H.C.P. is filed against this order.

3. When the matter came up for hearing on an earlier occasion, the following order was passed by the Division Bench on 23.9.2002 :-

"As soon as the matter was taken up, the Public Prosecutor submitted that the Government have no objection for sending the detenu back to Srilanka, if he makes a representation to that effect praying for his repatriation back to Srilanka and that as on date, the Government is unable to send him back in view of the pendency of a case registered for an offence of possession of a counterfeit Srilankan currency note. It is his further submission that a report from the Mint Forensic Expert is awaited and it is likely to be made available to the investigating officer in Crime No.1 of 2000 on the file of 'Q' Branch C. I.D., Trichy, in a week or ten days, and as soon as it is received, the final report will be filed against the detenu. He further submits that since the offence is punishable with the imprisonment or fine and in the event of the Court sentencing him only to fine, the Government will consider his request, if any made, favourably taking into consideration the facts and circumstances available as on that date. He, therefore, prays two weeks time. At his request, adjourned by two (2) weeks, for which course, the learned counsel for the petitioner has no objection.

Adjourned by two (2) weeks."
(emphasis is added)
As no orders as per the undertaking and as contemplated were passed, the matter was mentioned before another Bench and after several requests and adjournments by the learned Additional Public Prosecutor, the following order

ultimately came to be passed on 5.3.2003 :-

"As an interim measure, without going into the main relief sought for in the petition, we are satisfied that the only objection for the detention of the detenu Anandh @ Anandh @ Geetha Annan in the Special Camp for Srilankan Refugees at Chengalput viz. the pendency of the criminal case, can be directed to be disposed of in a time-bound manner, since the learned Senior Counsel for the petitioner submitted that the detenu will be prepared to pay the fine to close the criminal case. Hence, we direct the Judicial Magistrate No.II, Trichy, to advance the committal proceedings in P.R.C. No.13/2003 to 10.3.2003 and commit the matter to the Sessions Court, and in turn, the Sessions Court shall take up the matter on 17.3.2003 and dispose of the same on merits and in accordance with law.

2. Post this H.C.P. on 19.3.2003."
It was specifically understood, according to the learned senior counsel and not controverted, that in the hearings on those days that considering the facts and circumstances of the case, the matter could be closed instead of going into the merits of the H.C.P. and accordingly, the said order came to be passed.

4. However, now, the learned senior counsel for the petitioner submits that contrary to the spirit and the purpose for which two orders were passed by the Division Bench earlier, charges have been framed against the detenu on 17.3.2003 under Sections 489A, 489B, 489C and 489 D and the detenu was served with the charge sheet running to hundreds of pages and without even giving an opportunity for him to contest the case regarding the framing of charges under certain sections, the matter is posted for trial on 19.3.2003. In the above circumstances, this court is constrained to consider the main case on merits.

4.1 Learned senior counsel for the petitioner submits that from the date of the impugned order passed on 11.12.2000 and served on the detenu on 19.2.2001, the detenu was kept in the Special Camp which is virtually a prison. The Special Camp at Poonamallee was previously the sub-jail and now converted to a Special Camp and is guarded by police and prison authorities. The detenu is kept inside the cell between 6 am and 6 pm and is allowed to move out in the small open space which is closed by gates and therefore, the detention of the detenu in the Special Camp is nothing but an imprisonment. The detenu had been kept in the Special Camp without providing an opportunity to him to question the impugned order and without a trial and conviction and therefore, the order is unconstitutional and violative of Articles 21 and 22 of the Constitution of India.

4.2 According to him, the only ground considered by the Division Benches as referred in the earlier two orders and also in the counter affidavit is that the pendency of a criminal case. In paragraph 16 of the counter filed by the Deputy Secretary to the Government, it is stated as follows:

"..... It is submitted that there is no question of detention for an

unlimited and indefinite period. A case is pending against the petitioner's son and hence, he cannot be allowed to leave the Special Camp now. After disposal of the case, he may be permitted to leave to a country of his choice if no other case is pending."

If the pendency of the case is the only point against the detenu, his detention inspite of the bail order granted by the criminal court in Crl.M.P. No.211 of 2001 is clearly unconstitutional and deprivation of the personal liberty of the detenu and other rights guaranteed under Articles 21 and 22 of the Constitution.

4.3 Learned senior counsel further submits that the authorities have failed to consider that the bail order itself was granted after several attempts, after the filing of the final report by the police and after the completion of 90 days and inspite of that position, the detenu was kept confined from December, 2000 for more than two years now and the charge sheet was filed only on 17.3.2003. The order of detention, according to him, is therefore clearly illegal.

4.4 According to him, the object of keeping the detenu in a Special Camp, namely to regulate his continued presence in India, is no longer valid since the detention of a foreigner is now regulated by the National Security Act, 1980 which has replaced the Preventive Detention Act, 1950.

4.5 According to the learned senior counsel, when the Parliament has enacted a fresh legislation on the same subject, namely dealing with foreigners providing for greater safeguards, then those provisions would come under the provisions of the latter Act and in the absence of the Advisory Board and the opportunity to the detenu, detention for an unlimited period of time is clearly illegal.

4.6 It is submitted that the National Security Act, 1980 is a special enactment on the subject which covers the field and the same shall prevail over the Foreigners Act, 1946.

4.7 It is further submitted that the power to detain the foreigner is available only with the Central Government under Section 3(2)(g) of the Foreigners Act, 1946 and the same has not been delegated to the State Government and hence, the Government cannot, by exceeding its power, pass an order of detention and confinement.

4.8 Lastly, it is submitted that the act of the first respondent in this case is colourable and malafide exercise of power done only in order to frustrate the conditional bail order granted by the competent court and there is no requirement to regulate the continued presence of the detenu, since the bail order granted by the criminal court regulates the presence of the detenu and in any event, the order was passed without taking into consideration the grant of bail and in arbitrary exercise of power.

4.9 For all the above reasons, learned senior counsel prays to set aside the impugned order and release the detenu from the Special Camp wherein

he is detained.

5. On behalf of the first respondent, a counter affidavit has been filed wherein it is stated that the detenu was arrested on 24.10.2000 at Tiruchirapalli when he was found in possession of 50 numbers of 10 00 denomination Sri Lankan counterfeit currencies and one number 1000 denomination Sri Lankan counterfeit currency. The detenu was produced before the Magistrate who remanded him to custody and therefore, he was lodged in the Special Camp on 19.2.2001, Chengalpattu on his release from the Central Jail, Tiruchirapalli on bail. According to the counter, the order was passed after taking into account the likelihood of the release of the detenu from jail on bail. According to the first respondent, the order was passed to regulate the continued presence of the detenu, a Sri Lankan, in India. It is submitted that the inmates of the Special Camp are provided with basic amenities and are allowed to move freely within the premises of the Special Camp. The respondent deny that the detenu was arrested and detained and according to them, he was only ordered to reside in the Special Camp and his movement is regulated for his continued presence in India, since he is a foreigner. The respondent states that there is no violation of Articles 14 and 21 of the Constitution. It is further stated that the authorities are empowered to pass the order and that the statutory provisions do not contemplate any show cause notice or an opportunity to the detenu and there is no question of the right of the detenu to make any representation with the corresponding obligation on the respondents to consider the same and grant the relief sought for.

6. In the additional counter affidavit filed in reference to the supplementary affidavit, it is stated that the National Security Act is a preventive detention Act having its own separate, distinguished procedures, though it applies to foreigners also, but that is only for the purpose mentioned under the Act and the procedure contemplated under the Act will apply. According to the additional counter, the National Security Act has not repealed the Foreigners Act insofar as it seeks to regulate the continued presence of the foreigners in India.

7. Learned Additional Public Prosecutor, while opposing the arguments advanced by the counsel for the learned senior counsel for the petitioner, strongly relied upon the judgment of a Division Bench of this court in KALAVATHY VS. STATE OF TAMIL NADU [1995 (2) LAW WEEKLY (CRL.) 690 (2)] and contended that the points raised by the petitioner in this case are squarely answered in the said judgment. By referring to the order passed by the Supreme Court in S.L.P. No.369 of 1996, he contended that the petitioner in that case, a Sri Lankan national, under similar circumstances, was ordered to be lodged in the Special Camp and as he did not have the necessary travelling documents, it was found that his detention was not illegal. According to him, the said order of the Supreme Court will apply to the facts of this case also. Learned Additional Public Prosecutor also relied upon the judgment of the Supreme Court in UNION OF INDIA VS. VENKATESHAN [2002 (3) SUPREME TODAY 421] and submitted that the courts should always lean against the implied repeal of an enactment, unless the two provisions are repugnant to each other and they cannot stand together and it is not possible on any reasonable hypothesis to give effect to both at the same time.

8. We have heard the learned senior counsel for the petitioner, the learned Additional Public Prosecutor and considered the matter carefully.

9. The National Security Act, 1980 is an Act meant to provide for preventive detention in certain cases and matters connected therewith. Section 3 of the Act empowers the Central or the State Government,

"(b) if satisfied with respect to any foreigner that with a view to regulate his continued presence in India or with a view to make arrangements for his expulsion from India it is necessary to do so, make an order that such person be detained."

Section 5 of the Act empowers the State Government to regulate the place and conditions of detention. Section 5(a) says that the detenu can be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for discipline as the appropriate Government may, by general or special order, specify. The Foreigners Act, 1946, which is a preConstitutional enactment, was an Act meant to confer upon the Central Government certain powers in respect of foreigners. Section 3 of the Foreigners Act, 1946 says that the Central Government may, by order, make provisions either generally or with respect to all foreigners,

"for prohibiting, regulating or restricting the entry of a foreigner into India or the departure therefrom or their presence or continued presence therein".

Sub-section (2) of Section 3 of the Act empowers the authorities to impose any restriction on his movements.

10. The impugned order in this case is passed under Section 3(2)(e) of the Foreigners Act, 1946 for regulating the continued presence of the detenu. According to the Government, the regulation includes imposing of restrictions on his movements, and the order directing that the detenu shall reside in the Special Camp amounts only to a restriction on his movements and not detention. Even though Section 3(g) of the Act empowers arrest, detention and confinement, according to the respondents, insofar as the detenu in this case is concerned, the said power has not been exercised and there is no need to exercise the power under the National Security Act, 1980.

11. In order to regulate the continued presence of a foreigner in India and if it is necessary to do so, the power to be exercised is Section 3 of the National Security Act, 1980. A State Government is empowered under the Foreigners Act, 1946 to regulate the continued presence of a foreigner by imposing restrictions on his movements. The power that is exercised under Section 3 of the Foreigners Act, 1946, among other things, empowers the authorities to pass an order that a foreigner shall not remain in India or in any prescribed area thereunder, that he shall remove himself to and remain in such area as may be prescribed and shall comply with such conditions as may be prescribed or specified, namely to reside in a particular place to restrict his movements, to require him to prove his identity, to require him to submit

himself to examination, prohibit him from joining association and other activities, etc., all read together would only show that the power of regulation with purpose is not a measure of punishment. They are nothing but regulatory measures. Section 3(2)(g) of the Act also provides the power of detention. Section 4 of the Act dealing with confinement, subject to conditions as to maintenance of discipline, etc. says under Sub-section 4(2) as follows :-

"Any foreigner (hereinafter referred to as a person on parole), in respect of whom there is in force any order under Clause (e) of Subsection (2) of Section 3 requiring him to reside at a place set apart for the residence under supervision of a number of foreigners, shall while residing therein be subject to such conditions as to maintenance, discipline and punishment to offences and breaches of discipline as the Central Government, from time to time, by order, determine."

12. Article 21 of the Constitution of India which protects the life and personal liberty and Article 22(4) which provides safeguards against preventive detention shall apply to any person, whether a citizen or not. Therefore, where a person's liberty is taken away, or if he is made an intern, after the coming into force of the Constitution, such an order depriving the person of his liberty must comply with the requirement of Articles 21 and 22(5) of the Constitution. When the National Security Act, 1980 empowers the authorities to pass an order under Section 3, specifically in reference to a foreigner, with a view to regulate his continued presence in India and which complies with the Constitutional requirements, the power under the Foreigners Act, 1946 cannot be availed of. Apart from the fact that Foreigners Act, 1946 is a pre-Constitutional Act, which is not in consonance with the fundamental rights guaranteed to any person and when such person comes under the special enactment namely the National Security Act, 1980 on the same subject matter, the power cannot be availed of by the authorities under the Foreigners Act. Therefore, even assuming that internment is not a detention, the requirement to reside at a particular place set apart should be in consonance with Articles 21 and 22 (4) of the Constitution. It follows that there should be sufficient safeguard for such an order in conformity with Articles 21 and 22(4) of the Constitution.

13. The National Security Act, 1980, being a special latter enactment, alone can hold the field and the power within the latter enactment with all its restrictions could be invoked and maintained. It is not justifiable on the part of the Government to invoke Section 3(2)(e) of the Foreigners Act, 1946 only to avoid the latter Act for the purpose of regulating the continued presence of a foreigner.

14. A distinction is made between the internees held under Section 3 (2)(g) of the Foreigners Act, 1946 and the internees held under Subsection 2(e) of the Act. Insofar as the latter category of foreigners are concerned, they are to reside at a place set apart for residence. In this case, the facts that the detenu was ordered to remain in the Special Camp which was previously a sub-jail and that he was kept there inside a cell and was allowed limited movement outside the cell during day time is a clear case of

confinement, for which there is no order under Section 3(2)(g) of the Act. There was no order under the National Security Act, 1980 either. Hence, there is a restriction amounting to detention. Therefore, the argument that the court should lean against the implying repeal does not arise for consideration in the facts of this case.

15. The Division Bench, in KALAVATHY's case cited supra, could not consider the question vis-a-vis the National Security Act, 1980 to regulate the continued presence of a foreigner.

16. Assuming that the legality of the order as set out above can be sustained, on merits, we find that the order is vitiated on many counts :
i) The impugned order did not take note of the bail order passed by the learned Principal Sessions Judge, Tiruchirapalli in Crl.M.P. No.211 of 2001 dated 1.2.2001 with a condition that the detenu should reside at Chengalpattu and report before the Judicial Magistrate, Chengalpattu everyday.
ii) Even though the counter affidavit says that the bail order was taken note of, the admission in the counter is that since a case is pending against the detenu, he cannot be allowed to leave the Special Camp and it is also stated that the detention order is passed only because of the pendency of the case and nothing else.
iii) The learned Additional Public Prosecutor, in the orders extracted above, has maintained that the Government has no objection in sending the detenu back to Sri Lanka and that the impugned order was passed only because of the pendency of the criminal case against the detenu. If that is so, then, regulating the presence of the detenu under the Foreigners Act, 1946 can only be in a place set apart for residential purpose and not in a Special Camp which is meant for keeping persons who have entered into India unauthorizedly and as refugees.
iv) Insofar as the detenu in this case is concerned, he has entered into India along with the petitioner herein authorizedly, has complied with all the formalities and also has a residence in India ever since 1983. Therefore, the impugned order clearly amounts to a detention and confinement.

17. In this context, the judgment of the Division Bench in KALAVATHY's case is clearly distinguishable on facts. The Division Bench, in that case, was concerned with persons who had close links with L.T.T.E. and they had posed a danger to the security of the State. Apart from there being members belonging to various militant groups, the petitioners in that case were all of that category and therefore, this decision will not apply to the case of other foreigners. The argument of the learned Additional Public Prosecutor in that case was that the enquiry revealed that the respective foreign nationals were having illegal connections with L.T.T.E. Those foreign nationals were not in possession of any legal documents and they were having close links with L.T.T.E. It is only those internees who are kept in Special Camps, at the rate of four persons per cell, by locking up the inmates from 6 am to 6 pm with certain relaxation. It was argued that the petitioners in those cases had engaged themselves in anti-social activities like smuggling of arms and explosives unauthorizedly, exporting fuel and other essential commodities to Sri Lanka, besides committing offences against the local public, apart from getting involved in Rajiv Gandhi's assassination. It was

further argued by the learned Additional Public Prosecutor in that case that Sri Lanka nationals were being permitted to stay in this country subject to the condition that they would not indulge in activities prejudicial to the interests of this country in any manner. If they had their own plans to settle in peace, they can follow the said plan or in the alternative, accept the plans of the Central and State Governments to settle themselves in this country peacefully. The State Government never intended to detain or regulate the movements of stay or peace. However, persons who belonged to various militant groups had to be segregated and their movements regulated not only in the interests of the State, but also for the welfare of those militants who were inimically disposed to each other. It was specifically stated by the learned Additional Public Prosecutor in that case as follows :-

"Except that reasonable restrictions have been imposed on those foreigners who have entered into India without any valid document and had indulged in activities which are prejudicial to the security, safety and territorial integrity of India, their liberty has not been taken away."

In that context, the Division Bench accepted the case that the detenu were neither arrested nor detained. The Division Bench, after considering these arguments, found from the facts narrated that only a small percentage of Sri Lankans who had been entertained as refugees were said to have been detained in the Special Refugee Camps "in view of the information available to the State Government that they belong to militant groups and have close links not only with the L.T.T.E. Organisation, but some of them had a role to play in the Rajiv Gandhi's assassination".

18. The facts, set out above in the said case are totally in contrast with the facts of the case on hand and hence, the decision of the Division Bench that a special refugee camp cannot be termed as an internment camp thereby justifying the order passed under Section 3(2)(e) of the Foreigners Act, 1946 will not apply to the facts of this case. The detenu in this case will not come under any of the categories referred to by the Division Bench in the said judgment. He is a Sri Lankan citizen living in India as a foreigner and therefore, his internment as contemplated under Section 4 of the Foreigners Act, 1946, in the facts and circumstances of the case, is nothing but an order of detention and confinement.

19. In HANS MULLER VS. SUPERINTENDENT, PRESIDENCY JAIL, CALCUTTA [A.I.R. 1955 S.C. 367], a Constitution Bench of the Supreme Court was dealing with an order of detention passed by the State Government under Section 3(1) of the Preventive Detention Act, 1950. It was held therein that a legislation that forced jurisdiction on Governments in this country to deprive foreigners of their liberty cannot but be a matter that will bring the Union with relation to Foreign States, particularly when there is no public hearing and no trial in the ordinal courts of the land. There, the Supreme Court was concerned with a case of an expulsion of a foreigner. While considering the question of limitation imposed on the power of the Government by Articles 21 and 2 2 of the Constitution, the Supreme Court held as follows :-

"The right to make arrangements for an expulsion includes the right to make arrangements for preventing any evasion or breach of the order and the Preventive Detention Act confers the power to use the means of preventive detention as one of the methods of achieving this end. How far it is necessary to take this step in a given case is a matter that must be left to the discretion of the Government concerned, but in any event, when criminal charges for offences said to have been committed in this country and abroad are levelled against a person, an apprehension that he is likely to disappear and evade an order of expulsion cannot be called either unfounded or unreasonable. The detention in such cases is rightly termed preventive detention and falls within the ambit of the Preventive Detention Act and is reasonably related to the purpose of the Act."

The counter affidavit in this case has exactly stated as follows :-

"As there are possibilities for violating the conditions imposed by the Court by the petitioner's son, an order was issued under the Foreigners Act, 1946."

Therefore, this is a clear case of detention.

20. In HANS MULLER's case, cited supra, the Attorney General had conceded the limitations under the Foreigners Act, 1946 as follows :-

"There are further limitations, but they were not invoked except that the learned Attorney General explained that the unrestricted power given by Section 4(1), Foreigners Act, 1946, (a pre-Constitution measure) to confine and detain foreigners became invalid on the passing of the Constitution because of Articles 21 and 22. Therefore, to bring this part of the law into the line with the Constitution, Section 3 (1)(b), Preventive Detention Act, 1950 was enacted. It was more convenient to insert new provisions about the confinement and detention of foreigners in the Preventive Detention Act rather than amend the Foreigners Act, because the Preventive Detention Act was a comprehensive Act dealing with preventive detention and was framed with the limitations of Articles 21 and 22 in view."

Therefore, the argument of the Attorney General, that confinement of a foreigner will become invalid if he does not conform to the requirement of Articles 21 and 22 of the Constitution, was approved by the Supreme Court.

21. Even assuming that the power under Section 3 exercised is under the Foreigners Act, 1946, on merits, the impugned order is liable to go. On facts, as set out earlier, the detenu was said to have been found in possession of foreign currency equivalent to Indian Rupees Twenty Five Thousand and he was detained for more than two years without a trial and without a charge sheet. Though the Government agreed that charges under Section 489 simpliciter could be framed and a fine imposed on the detenu, later on, they have proceeded to charge him under Sections 489A, 489B, 489C and 489D and charges were framed on 17.3.2003.

22. When bail order was passed by the competent criminal court

imposing certain conditions, it is not open to the competent authority to pass an order without taking into account the conditional bail order, only in order to frustrate the bail order, by detaining the detenu in a Special Camp. The Government has no other objection except as to the pendency of the criminal case against the detenu and therefore, the regulation of his continued presence by interning/confining him in a Special Camp is clearly illegal. In VARADHARAJ VS. STATE OF TAMIL NADU [A.I.R. 2002 S.C. 2953], the Supreme Court has held that placing of the application for bail and the order thereon are not always mandatory and such requirement would depend upon the facts of each case. In the light of the fact that the bail order came to be passed after 90 days when no charge was framed and in the light of the stand of the Government that they have no objection in the detenu leaving for a country of his choice if no other case is pending against him and that their only objection for the grant of bail is the pendency of the criminal case against him and also the stand of the Public Prosecutor before the two Division Benches that excepting the pendency of the criminal case against the detenu, they have no objection for his release, the order of bail has assumed significance and the detaining authority ought to have taken note of the bail application and the bail order and the stand of the Government in regard to the detenu. In VARADHARAJAN's case, cited supra, it was held that the failure to note the stand of the Public Prosecutor that he had no objection for the grant of bail is a vital material which the detaining authority ought to have taken note of and that non-consideration of this fact vitiates the order of detention.

23. In LOUIS DE RAEDT VS. UNION OF INDIA [A.I.R. 1981 S.C. 1886], the Supreme Court, while upholding the view that foreigners have a fundamental right under Article 21 of the Constitution for life and liberty, held that the power of India to expel a foreigner is absolute and unlimited. However, insofar as the right to be heard is concerned, it was held that there cannot be any hard and fast rule about the manner in which the person concerned is to be given an opportunity to place his case. Therefore, in this case, before depriving the right of a person as guaranteed under Article 21 of the Constitution or even after doing the same, the detenu was not given any opportunity whatsoever for over two years. On this ground also, the impugned order is liable to be set aside.

24. For all the above reasons, we hold that the order impugned in this case is illegal, unconstitutional and is liable to be set aside. Accordingly, the impugned order is hereby set aside. The H.C.P. is allowed. The respondents are hereby directed to release the detenu forthwith, subject to the detenu complying with the conditions stipulated in the bail order granted by the Principal Sessions Judge, Tiruchirapalli.

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To
1. The Secretary to Government,
Public (SC) Department,
State of Tamil Nadu,
Fort St. George,

Chennai-9.

2. The District Collector,
Chengleput District,
Kancheepuram.

3. The Officer-in-charge,
Special Camp for Srilankan Refugees,
Chengleput.
(in duplicate for communication to detenu)

4. The Principal Sessions Judge,
Tiruchirapalli.

5. The Judicial Magistrate,
Chengalpattu.

6. The Joint Secretary to Government,
State of Tamil Nadu,
Public (Law and Order),
Fort St. George,
Chennai-9.

7. The Public Prosecutor,
Chennai-600 104.